

HOUSE BILL 2887  
By Eldridge

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 5,  
relative to the Regulatory Flexibility Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 5, is amended by adding  
Sections 2 through 7 of this act as a new Part 4.

SECTION 2. This part shall be known and may be cited as the "Regulatory Flexibility  
Act of 2004".

SECTION 3.

As used in this part, unless the context otherwise requires:

(1) "Agency" means each state board, commission, department, or officer  
authorized by law to make regulations or to determine contested cases;

(2) "Proposed regulation" means a proposal by an agency for a new regulation or  
for a change in, addition to, or repeal of an existing regulation;

(3) "Regulation" means each agency statement of general applicability, without  
regard to its designation, that implements, interprets, or prescribes law or policy, or  
describes the organization, procedure, or practice requirements of any agency. The term  
includes the amendment or repeal of a prior regulation, but does not include:

(A) Statements concerning only the internal management of any agency  
and not affecting private rights or procedures available to the public;

(B) Declaratory rulings; or

(C) Intra-agency or interagency memoranda; and

(4) "Small business" means a business entity, including its affiliates, that is  
independently owned and operated and employs fewer than five hundred (500) full-time  
employees or has gross annual sales of less than six million dollars (\$6,000,000).

#### SECTION 4.

Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

- (1) An identification and estimate of the number of small businesses subject to the proposed regulation;
- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;
- (3) A statement of the probable effect on impacted small businesses; and
- (4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

#### SECTION 5.

(a) Prior to the filing of any proposed rule or regulation with the secretary of state on and after the effective date of this act each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, and environmental and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing the adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the department of economic and community development of its intent to adopt the proposed regulation. The department of economic and community development shall advise and assist agencies in complying with the provisions of this section.

#### SECTION 6.

(a) For any regulation subject to this part, a small business that is adversely affected or aggrieved by such regulation is entitled to judicial review of agency compliance with the requirements of this section.

(b) A small business may seek such review during the period beginning on the date of filing of the regulation with the secretary of state and ending one (1) year later.

#### SECTION 7.

(a) Within four (4) years of the effective date of this act, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one (1) year at a time for a total of not more than five (5) years.

(b) Rules adopted after the effective date of this act shall be reviewed within five (5) years of the publication of the final rule by the secretary of state and every five (5) years thereafter to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.